

SENATE BILL REPORT

ESB 5915

As Passed Senate, April 21, 2009

Title: An act relating to authorizing emergency rule making when the state employment growth forecast is estimated to be less than one percent.

Brief Description: Authorizing emergency rule making when necessary to implement budget appropriations and reductions.

Sponsors: Senators Prentice and Fairley; by request of Office of Financial Management.

Brief History:

Committee Activity: Government Operations & Elections: 2/24/09 [DP].

Passed Senate: 4/21/09, 36-11.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; McDermott, Pridemore and Swecker.

Staff: Sharon Swanson (786-7447)

Background: Under the Administrative Procedures Act an agency planning on adopting administrative rules is required, at least 20 days before a rule-making hearing at which the agency receives public comment, to publish notice of the hearing in the State Register. Publication constitutes the proposal of a rule. Upon filing notice of the proposed rule with the Code Reviser, the adopting agency must have copies of the notice on file and available for public inspection. No later than three days after its publication in the State Register, the agency must cause either a copy of the notice of proposed rule adoption or a summary of the information contained on the notice to be mailed to each person, city, and county that has made a request to the agency for a mailed copy of such notices.

Currently, there are two causes for which an agency may adopt an emergency rule if it finds good cause:

- immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; or

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- state or federal law, or federal rule, or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

The agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis.

An agency's finding and a concise statement of the reasons for its finding must be incorporated in the order for adoption of the emergency rule or amendment filed with the Office of the Code Reviser. An emergency rule takes effect upon filing with the Code Reviser and may not remain in effect for longer than 120 days after filing.

Summary of Engrossed Bill: A third cause for which an agency may adopt an emergency rule if it finds good cause is added. In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency, the agency may dispense with the requirements and adopt, amend, or repeal the rule on an emergency basis.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: The Office of Financial Management (OFM) believes this bill is necessary to implement the budget and should go to Ways and Means. Fiscal constraints alone are not sufficient for state agencies to revise rules quickly to change programs to realize the fiscal savings desired in the budget. The authority in this bill is narrowed to those instances when the rainy day fund can be accessed.

Persons Testifying: PRO: Julie Murray, OFM.